



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of )

Robert S. Block )

Application No.: 08/697,542 )

Filed: August 27, 1996 )

For: METHOD AND APPARATUS FOR )  
INFORMATION LABELING AND )  
CONTROL )

Group Art Unit: 2611

Examiner: Vivek Srivastava

Confirmation No.: 9969

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Technology Center 2600

**REQUEST FOR RECONSIDERATION**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Office Action dated 20 May 2004, Applicant respectfully requests reconsideration.

Claims 27, 31, 34, 45, 47 and 61-66 are pending.

Applicant gratefully acknowledges the indication in the Office Action that Claims 27 and 31 are allowed.

In the Office Action, the Examiner rejects Claims 34, 45, 47 and 61-66 under 35 U.S.C. § 103(a) over U.S. Patent No. 5,758,257 to Herz, *et al.* (Herz). This rejection is respectfully traversed.

Herz discloses providing a program based on a user's profile. Herz also discloses providing advertising during programs based on the user's profile. However, the advertising is provided based on the user's profile, not the program.

Furthermore, Herz fails to disclose or suggest monitoring an instantaneous content level of the program over the duration of the program, and scheduling an advertisement within (or outside) a predetermined time interval of a predetermined

value of the instantaneous content level (which can for example vary during the program).

The Examiner takes Official Notice that "it would have been well known in the art to present an advertisement within a predetermined time interval to ensure the advertisement is correctly displayed at the desired time". This fails to identify what a "desired time" is, and how it is determined or selected. Applicant notes that commercials are typically programmed to run near quarter hour marks of television shows regardless of show content, and have been for decades.

Accordingly, the asserted combination of Herz with the Examiner's Official Notice fails to disclose or suggest that when a content level of a portion of a program reaches a predetermined value or has a particular aspect, an advertisement is scheduled to be presented inside a time interval of that point in the program, as encompassed by Claims 34, 45, 47, 61-64.

The asserted combination of Herz with the Examiner's Official Notice likewise fails to disclose or suggest that when a content level of a portion of a program reaches a predetermined value or has a particular aspect, an advertisement is scheduled to be presented *outside* a time interval of that point in the program, as encompassed by Claims 65-66.

For at least the above reasons, Applicant respectfully submits that the asserted combination of Herz with the Examiner's Official Notice fails to disclose or suggest Claims 34, 45, 47 and 61-66. Withdrawal of the rejection of Claims 34, 45, 47 and 61-66 under 35 U.S.C. § 103(a) over Herz is respectfully requested.

Applicant respectfully submits that the application is in condition for allowance. Favorable consideration on the merits and prompt allowance are respectfully requested. In the event any questions arise regarding this communication or the application in general, please contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: 22 November 2004

By: \_\_\_\_\_



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